THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16434 of 2000

ORDER:

The petitioners are accused Nos.5 and 6 in crime No.99 of 2000 of IV Town P.S., Nizamabad. They filed the instant writ petition for quashing the said crime on the ground that no offence is made out against the petitioners.

The second respondent herein filed a private complaint under Section 200 of Code of Criminal Procedure, 1973 (Cr.P.C) on the file of the Court of the Judicial Magistrate of First Class, Nizamabad. In the said complaint, second respondent alleged that he, his mother and father purchased the premises bearing No.3-10-969/1/1 admeasuring 2,000 square yards situated at Surya nagar, Kotagalli, Nizamabad under three registered sale deeds dated 27.08.1964, 19.10.1964 and 10.07.1965 and that after death of the parents, the complainant constructed a compound wall, that he offered property for sale to one Paldo Pentaiah under an agreement of sale deed dated 23.05.1992 and another agreement of sale with Bigala Gangadhar and Bramanapalli Prakash. He further alleged that Munnuru Kapu Sangam approached him to purchase the property for construction of Kalyana Mantapam, at that time Budda Sudershan was tenant in the cattle shed for the purpose of manufacturing steel Almirahs. He refused to vacate the plot and insisted to sell the plot to him. The request was refused but Budda Sudershan created false documents as if it is agreement of sale executed by one Paldo Pentaiah in respect of portion of the land. Based on such agreement, Budda Sudershan filed suit being O.S.No.373 of 1998 for perpetual injunction on the file of the Court of the Junior Civil Judge, Nizamabad. But his application for interim injunction being I.A.No.782 of 1998 was dismissed by the said Court and the complainant is contesting the said suit. Bigala Gangadhar and Bramanapalli Prakash filed O.S.No.110 of 1997 against the complainant for specific performance on the file of the Court of the Senior Civil Judge, Nizamabad and the same is pending. In October, 1999, accused No.8 brought accused Nos.1 to 4 demanded a share to them stating that they related to Begari Sayanna from whom a part of the site was purchased. The same was refused by the complainant. Accused Nos.1 to 4 at the behest of accused No.8 created two sale deeds and executed separate sale deeds in favour of accused No.5, who purchased the property on the advice of her husband, accused No.6. Accused Nos.1 to 4 have no right to sell the property to accused Nos.5 and 7, and Accused Nos.6 and 8 have indulged in the illegal acts. It is further alleged in the complaint that for the purpose of mutation, accused Nos.1 to 8 impersonated and forged the signature of mother of Smt. Late Radha Bai who died on 01.07.1985 and got the property mutated in favour of accused No.5. Therefore, all the accused have committed offences under Sections 419, 420 and 467 of Indian Penal Code, 1860.

The learned Judicial Magistrate before whom the complaint was filed referred the complaint under Section 156(3) of Cr.P.C., for investigation. The first respondent registered the crime and took up investigation.

The matter was admitted by this Court on 06.09.2000 and all further proceedings in crime No.99 of 2000 were stayed. Subsequently on 15.10.2001, it was brought to the notice of this Court that first respondent completed investigation and filed a report before the Court of Judicial Magistrate of First Class, Nizamabad, which was numbered as C.C.No.925 of 2000. Therefore, the petitioner has filed an interlocutory application being W.P.M.P.No.30459 of 2001 to amend the writ petition challenging the C.C.No.925 of 2000.

When once a crime is registered and the learned Judicial Magistrate takes cognizance of the case based on the report of the police filed under Section 153(2) of Cr.P.C., ordinarily a petition under Article 226 of the Constitution of India for quashing calendar case does not lie. All questions raised which may be valid defence of the accused have to be agitated before the trial Magistrate. The only exception to this Rule would be when on the face of it, the private complaint lodged by the contesting respondents does not disclose any offence.

The learned counsel for the petitioners, Sri M.S.Ramachandra Rao, submits that if there is a dispute between the vendors of the petitioners and the second respondent, the same does not in any manner lead to an allegation of offence against the petitioners. According to the learned counsel, a suit for specific performance already filed and the petitioners being *bona fide* purchasers under valid sale deeds cannot be alleged to have committed any offences of cheating and forgery.

The submission is devoid of any merit. There are two aspects of the case. The first aspect of the case deals with the alleged illegal sale by accused Nos.1 to 4 at the behest of accused No.8 to accused Nos.5 to 6 if there is a dispute between accused Nos.1 to 4 and the complainant on one side and Bigala Gangadhar and Bramanapalli Prakash on the other side. It is true that itself would not *prima facie* lead to a conclusion that accused Nos.5 and 6 are guilty of an offence who in this case an allegation is made in the complaint that accused Nos.1 to 8 obtained mutation proceedings in favour of accused No.5 by impersonating and forging the signature of mother of the complainant. Therefore, it canot be said that the complaint does not disclose any offence. In view of this, all other matters must await a regular trial.

The writ petition is devoid of any merit and is accordingly dismissed. The interim order passed by this Court shall stand vacated. The learned Additional Judicial Magistrate is directed to dispose of C.C.No.925 of 2000 (arising out of crime No.99 of 2000 of IV Town P.S., Nizamabad) as expeditiously as possible not later than three months from the date of receipt of this order. No costs.

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(V.V.S.RAO,J)

19.07.2005.

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